

Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.

§ 122C-281. (Effective until October 1, 2019) Affidavit and petition before clerk or magistrate; custody order.

(a) Any individual who has knowledge of a substance abuser who is dangerous to himself or others may appear before a clerk or assistant or deputy clerk of superior court or a magistrate, execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. The affidavit shall include the facts on which the affiant's opinion is based. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably a substance abuser and dangerous to himself or others, he shall issue an order to a law-enforcement officer or any other person authorized by G.S. 122C-251 to take the respondent into custody for examination by a physician or eligible psychologist.

(c) If the clerk or magistrate issues a custody order, he shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) If the affiant is a physician or eligible psychologist, he may execute the affidavit before any official authorized to administer oaths. He is not required to appear before the clerk or magistrate for this purpose. His examination shall comply with the requirements of the initial examination as provided in G.S. 122C-283(c). If the physician or eligible psychologist recommends commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for commitment, he shall issue an order for transportation to or custody at a 24-hour facility or release the respondent, pending hearing, as described in G.S. 122C-283(d)(1). If a physician or eligible psychologist executes an affidavit for commitment of a respondent, a second qualified professional shall perform the examination required by G.S. 122C-285.

(e) Upon receipt of the custody order of the clerk or magistrate, a law-enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed. The custody order is valid throughout the State.

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician or eligible psychologist as set forth in G.S. 122C-283(c) shall be carried out in accordance with the area plan. When an individual from a single portal area is presented for commitment at a facility directly, he may be accepted for admission in accordance with G.S. 122C-285. The facility shall notify the area authority within 24 hours of admission and further planning of treatment for the individual is the joint responsibility of the area authority and the facility as prescribed in the area plan. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 3; 1979, c. 164, s. 2; c. 915, ss. 3, 18; 1983, c. 383, s. 5; c. 638, ss. 3-5; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 4; 2004-23, s. 1(b).)

§ 122C-281. (Effective October 1, 2019) Affidavit and petition before clerk or magistrate; custody order.

(a) Any individual who has knowledge of a substance abuser who is dangerous to self or others may appear before a clerk or assistant or deputy clerk of superior court or a magistrate, execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a commitment examiner. The affidavit shall include the facts on which the affiant's opinion is based. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably a substance abuser and dangerous to self

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or others, the clerk or magistrate shall issue an order to a law enforcement officer or any other person designated under G.S.122C-251(g) to take the respondent into custody for examination by a commitment examiner.

(c) If the clerk or magistrate issues a custody order, the clerk or magistrate shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) If the affiant is a commitment examiner who has examined the respondent, he or she may execute the affidavit before any official authorized to administer oaths. The commitment examiner is not required to appear before the clerk or magistrate for this purpose. The commitment examiner's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-283(c). The affiant shall file the affidavit and examination findings with the clerk of court in the manner described in G.S. 122C-261(d)(1). If the commitment examiner recommends commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for commitment, the clerk or magistrate shall issue an order to a law enforcement officer to take the respondent into custody for transportation to a 24-hour facility, or, if the respondent is released pending hearing, as described in G.S. 122C-283(d)(1), order that a hearing be held as provided in G.S. 122C-284(a). If a physician or eligible psychologist executes an affidavit for commitment of a respondent, a second qualified professional shall perform the examination required by G.S. 122C-285. Any person or entity who or which has been designated in compliance with G.S. 122C-251(g) shall be permitted to complete all or part of the duties of a law enforcement officer, in accord with the designation.

(e) Upon receipt of the custody order of the clerk or magistrate, a law enforcement officer or other designated person identified in the order shall take the respondent into custody within 24 hours after the order is signed. The custody order is valid throughout the State.

(e1) No commitment examiner, area facility, acute care hospital, general hospital, or other site of first examination, or their officials, staff, employees, or other individuals responsible for the custody, examination, detention, management, supervision, treatment, or release of an individual examined for commitment, who is not grossly negligent, shall be held liable in any civil or criminal action for taking measures to temporarily detain an individual for the period of time necessary to complete a commitment examination, submit an affidavit to the magistrate or clerk of court, and await the issuance of a custody order as authorized by subsection (d) of this section.

(f) Repealed by Session Laws 2018-33, s. 32, effective October 1, 2019. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 3; 1979, c. 164, s. 2; c. 915, ss. 3, 18; 1983, c. 383, s. 5; c. 638, ss. 3-5; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 4; 2004-23, s. 1(b); 2018-33, s. 32.)